

BEFORE THE DISTRICT CONSUMER DISPUTES
REDRESSAL FORUM KAPURTHALA

Complaint No. 50 of 2013

Date of Instt.22/07/2013

Date of Decision : 17/09/2013

Azadi Lal Sharma son of Late Sham Lal Sharma
resident of 631, Model Town, near Geeta Mandir,
Jalandhar City - 144003.

Complainant.

Versus

Public Information Officer (Designated under RTI Act,
2005), Municipal Corporation, Phagwara, District
Kapurthala.

.....Opposite Parties

Complaint under Consumer Protection Act.

Before: Sh. George (President)

Sh. Parkash Singh Lamme (Member)

Present: Sh. K.C. Malhotra counsel for complainant

Sh.Mohit Kapoor counsel for opposite party.

ORDER

Sh. George (President)

1. Complainant has filed the present complaint under
section 12 of the Consumer Protection Act (hereinafter
referred to as Act) seeking directions from this Forum
to opposite party to supply information/copies of

documents as per particulars specified in complainant's RTI application which the opposite party has failed to supply to the complainant within stipulated period of 30 days of his RTI application dated 22/4/13 and also to award compensation/penutive damages to the tune of Rs.80000/- alongwith litigation expenses to the tune of Rs.5500/- and Rs.1000/- as expenses for filing the present complaint.

Complainant pleaded that he filed application under section 6(1) of the Right to Information Act, 2005 (hereinafter referred to in short as RTI Act) alongwith prescribed fee of Rs.10/- in the form of postal order with the opposite party and requested opposite party to supply following information :

1. Authenticated copy of Plan/Map of the abovesaid property sanctioned by Municipal Corporation, Phagwara alongwith autheticated copy of TSI Form (House Tax Assessment Register_ from the date of coming into existence of Municpal Corporation, Phagwara upto date.
2. Copy of assessment order of House tax from the date of its imposition and other orders passed subsequent to the first assessment year wise.
3. No due certificate of House Tax of the property aforesaid.
4. Change of name of owner/landlord from Sham Lal decease to someone else, copy of the order alongwith copy of the application on the basis of which ownership was changed.

That complainant continued to wait for the supply of above referred information. However, he did not

receive any information from the opposite party within stipulated time of 30 days and even after lapse of more than three months from the date of his application, opposite party has consciously violated the provisions of RTI Act, 2005 and rules of 2007 framed under the RTI Act and has shown callous attitude to put off the demand of complainant. The opposite party being a "service provider" was legally bound to provide information sought by the complainant under RTI Act. Complainant due to non supply of information sought by him could not seek his redressal for his grievance against Municipal Corporation, Phagwara in respect of property he has detailed in his application filed under the RTI Act. He has been thus put to unnecessary harassment, mental tension, and agony and also deprived him to seek his redressal against Municipal Corporation, Phagwara.

2. Opposite party contested the allegations and filed written reply raising intgeralia preliminary objections that Consumer Forum has got no jurisdiction to entertain and try the present complaint. Complainant do not fall within the meaning of 'consumer' as defined under the Act. Complainant has not approached Forum with clean hands and has withheld material facts. Complainant has no cause of action as per Municipal Corporation rules, no third party information can be supplied. Complainant has sought information qua third party who was duly informed in writing and third party has raised objection, and therefore, information has not been supplied, therefore, complaint deserves dismissal. Complaint has been filed on false, frivolous, and vexatious grounds which is not maintainable and is also bad for non joinder of necessary party i.e. Municipal Corporation, Phagwara, and as such, complaint is liable to be dismissed. On merits it is not denied that opposite party had not received application of the

complainant dated 22.4.13 under RTI Act . However, it has been pleaded that information sought by complainant is not discloseable as per the Municipal Corporation's rules, no third party information can be supplied. Complainant sought information qua third party and he was duly informed in writing that said information cannot be provided to him being third party information.. Rest of the allegations of complainant have been denied.

3. To prove his allegations complainant produced in evidence affidavits and documents Ex.C1 to C10 and closed evidence.

4. Opposite party produced in evidence affidavit and documents Ex.Op1 to OP4 and closed evidence.

5. We have heard learned counsel for the parties and have perused entire record of the case carefully.

Learned counsel appearing on behalf of complainant vehemently contended that as per application for information Ex.C3 dated 22/4/13 filed by complainant with the opposite party be sought information from the official records of the Municipal Corporation, Phagwara i.e. "authenticated copy of Plan/Map of the property No.B31XXX1 -6, G.T. road, Phagwara as sanctioned by Municipal Corporation, Phagwara alongwith authenticated copy of TS-1 Form (House tax assessment register) from the date of coming into existence of Municipal Corporation, Phagwara upto date, copy of assessment order of house tax, no due certificate of house tax of the said property, copy of order by which name of owner/landlord from Sham Lal changed alongwith copy of application on the basis of which ownership was changed." Learned counsel vehemently urged that complainant had sought the documents from the public record maintained by Municipal Corporation, Phagwara and has not sought

any information which relates to personal information of Sh.Kailash Nath Sood.

Learned counsel has further urged that even a private document if forms, part of public records kept in any state, the document will assume status of a " public document" and the information contained in any such private document becomes public record and it seize to be information which relates to personal information of any individual. Learned counsel in support of his above contention has referred to section 74 of the Indian Evidence Act, 1872 which reads as under :

" Public documents

74, Public Documents - The following documents are public documents

(1) Documents forming the acts, or records of the acts

(i) Of the sovereign authority,

(ii) Of official bodies and tribunals, and

(iii) Of public officers, legislative, judicial and executive,

(of any part of India or of the common wealth), or of a foreign Country

(2) Public records kept (in any state) of private documents.

He has also referred to clause J of Section 8(1) of the RTI Act which reads as under :

(J) Information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual

unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be , is satisfied that the larger public interest justifies the disclosure of such information.."

Learned counsel has thus urged that stand taken by the opposite party in his two affidavits Ex.OP1 and OP2, that information sought by complainant was relating to a third party, and therefore, as per rules of Municipal Corporation, Phagwara, the said information was not supplied to the complainant is without any substance.

Learned counsel appearing on behalf of opposite party vehemently opposed the arguments put forward by learned counsel for complainant and he urged that opposite party in his affidavit Ex.OP1 as well as supplementary affidavit Ex.OP2 has clarified that complainant applied for third party (Kailash Nath Sood, Hargobind Nagar, Phagwara) information regarding site plan, house tax of the property owned by Kailash Nath Sood. The Municipal Corporation, Phagwara sent a letter dated 10/5/13 Ex OP4 to Kailash Nath and telephonic call from said Kailash Nath sood was received who was and who is still in abroad. Sh.Kailash Nath Sood told that no information regarding his property be given to anybody. Learned counsel also urged that Sh.Kailash Chand Sood sent also a email to opposite party in the same contest and on the basis of which the information sought by the complainant being a third party & personal information of Sh. Kailash Nath Sood , the same was not supplied to the complainant.as per the exclusion clause of section 8 of the RTI Act.

We have considered the rival contentions of counsel for both the parties. After taking into consideration entire evidence available on the record of the case. The

application Ex.C3 for the information sought by the complainant under RTI Act reveals that complainant has sought the information, which is available in the record of Municipal Corporation, Phagwara which is public body and as per Section 74 (2) of Indian Evidence Act, any private document, if it is kept in public records, it is deemed to be a public document and it ceases to be the information, which relates to personal information of any individual. Complainant has sought information from the opposite party from the public records and therefore, entire information sought do fall within the meaning of "public document" as has been defined under section 74 of Indian Evidence Act and the said information is not an information which relates to personal information of Kailash Nath Sood in any manner.

The letter Ex.OP4 dated 10/5/13 addressed to Kailash Nath Sood by the opposite party has been sent to his local address i.e. "Sh.Kailash Nath Sood, Hargobind Nagar, Phagwara", whether the said letter was sent by post or it was delivered to any authorized agent of Sh.Kailash Nath Sood is not clear from the two affidavits Ex.OP1 and OP2 brought on record by the opposite party.. This fact is also not clear from the bare perusal of letter Ex.OP4 dated 10.5.13. Opposite party has also brought on record one email message Ex.OP3 which is not specifically addressed to opposite party or to any official of Municipal Corporation, Phagwara. Email message Ex.OP3 also does not reveal date and time on which it was sent and date and time it was received either by opposite party or any of the official of Municipal Corporation, Phagwara. Two documents Ex.OP3 and OP4 do not inspire judicial confidence, to exhibit bonafides of opposite party for not supplying the information sought by the complainant under section 6 (1) of RTI Act. The stand taken by the opposite party for not supplying the

information sought by the complainant appears to be totally unwarranted and unsustainable, as it does not fall under any clauses of section 8 of Right to Information Act which specifies the circumstances under which exemption can be claimed from disclosure of information sought under RTI Act. Accordingly, the arguments put forward on behalf of opposite party are unsustainable

The next contention raised by learned counsel for opposite party before us is that complaint is not maintainable and this Forum has no jurisdiction to entertain and try the present complaint, as the RTI Act is complete code and provides remedy in case of non supply of information by the opposite party. Learned counsel also pleaded that complainant is not "consumer" as per definition of 'consumer' provided under the Consumer Protection Act, 1986 and therefore, this Forum has no jurisdiction to entertain the consumer complaint.

We have considered arguments of learned counsel for the opposite party. Arguments appears to be without any legal force for the reason that similar matter came for consideration before Hon'ble National Commission in its judgment dated 28/5/09 passed in revision petition No.1975 of 2005 Dr.S.P. Thirumala Rao vs. Municipal Commissioner, Mysore City has held that applicant-petitioner who had sought information from the respondent under the provisions of Karnataka Right to Information Act, 2002 after paying fee of Rs.10/- is a consumer within the scope and ambit of section 2(1)(O) of the Consumer Protection Act, 1986. The Hon'ble National Commission has also observed in this case that if, the information is not supplied by the public information officer within the time prescribed under the Right to Information Act, then that amounts to "deficiency in service" and a consumer complaint can be filed against authority concerned, on that

ground under the Consumer Protection Act, 1986. The facts of this case are similar to the facts of instant case because in the instant case, complainant had requested opposite parties to issue the document from public record maintained by Municipal corporation Phagwara after paying prescribed fee for the same and therefore, case of complainant also fall within the scope and ambit of section 2 (1) (b) of the Consumer Protection Act. The stand taken by the opposite party that Consumer Forum has no jurisdiction to entertain the present complaint as the RTI Act is complete code, is also without any substance for the reason, that Hon,ble National Commission in revision petition refer to above has clearly held that consumer complaint is maintainable if any authority under the RTI Act fails to supply information sought within time prescribed under the RTI Act as that amounts to "deficiency in service" and consumer complaint is maintainable Accordingly arguments put forward by Ld counsel for opposite party are without any substance

Having regard to the position of the facts and law as has been explained herein above , we proceed to conclude that opposite party has committed grave "deficiency in service" by not supplying information to the complainant within statutory period specified under the RTI Act and thereby put the complainant to unnecessary harassment ,mental tension, agony and inconvenience by adopting a stiff attitude withholding public document without any legal reasons. .

Accordingly, we proceed to direct opposite party to ; -

1. To supply entire information as has been sought by the complainant as per his application Ex.C3 dated 22.4.13.

we further direct opposite party to pay to pay Rs.5000/-as compensation alongwith an amount of Rs.2000/- (lumpsum) as litigation expenses .

The above directions are to be complied with by opposite party within a period of one month from the receipt of copy of this order.

Copies of order be supplied to the parties free of cost under rules and file be consigned to the record room.

Announce; 17.9.13 Parkash Singh Lamme George
(Member) (President.)